REMARKS

The Office Action dated March 30, 2010 has been received and reviewed. This response, submitted along with a Petition for a Two-Month Extension of Time and a Request for Continued Examination (RCE), is directed to that action.

Claim 1 has been amended, and claims 2, 19 and 22-28 have been cancelled. Support for the amendment to claim 1 can be found in paragraphs [0069] through [0074] of the corresponding published US application, 2006/0140901 A1, and in Figure 5. No new matter has been added.

The applicants respectfully request reconsideration in view of the foregoing amendments and the following remarks.

Claim Rejections- 35 U.S.C. §112

The Examiner rejected claims 1, 2, 5-8, 11-13, 15, 19 and 22-28 under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement because the claims contain new matter. The Examiner noted that the previous claims contained subject matter directed only to an embodiment of the invention described as the article of Figure 5. However, the embodiment shown in Figure 5 was not fully claimed. Rather, claim 1 corresponded to the embodiments detailed in Figure 2, while claim 2 corresponded to embodiments of Figure 6.

The applicants have amended present claim 1 to claim the embodiment shown in Figure 5, and claim 2 has been cancelled. Therefore, the applicants believe the rejections under this section are now moot, and the Examiner is respectfully requested to withdraw the rejections.

Claim Rejections- 35 U.S.C. §103

The Examiner rejected claims 1-8, 10-13, 15 and 19 under 35 U.S.C. §103(a) as obvious over Lindauer (US 5,139,864) in view of Benko (US 2003/0091466) and further in view of Duterloo (WO 94/23765). The applicants respectfully traverse this rejection.

The applicants submit that a *prima facie* case of obviousness cannot be established because the references, as combined, do not teach all of the limitations of the present claims. Moreover, the differences between the presently claimed invention and the prior art are outside the level of ordinary skill in the art.

The presently claimed invention, as amended herein, now clearly specifies that the device is constructed such that the first phase has completely issued from the device before any emanation of the second phase. This means there is minimal, if any, simultaneous evaporation of the first and second volatile substances in the present invention, which is not taught in any of Lindauer, Benko or Duterloo. In fact, it completely contrasts with Lindauer, which does, in fact, teach simultaneous emanation of the first and second volatile substances.

The construction of the presently claimed device is significantly different from, and completely nonobvious to, Lindauer's device. The present invention permits greater control of vaporization release rates of the phases. Lindauer's device will clearly lead to the simultaneous emanation of the first and second volatile substances. There is little, if any, control of the rate and distribution of evaporation of the first and second volatile substances after the second phase has been exposed. Accordingly, Lindauer fails to teach or does not suggest that it would have been useful, or even possible, to control vaporization release rates.

In the Office Action, the Examiner disagreed with the applicants that Lindauer teaches simultaneous emanation of the first and second volatile phases. However, the

applicants respectfully submit that the Examiner has mischaracterized Lindauer's teachings. Indeed, the first matrix layer of Lindauer surrounds the second matrix layer, such that the first matrix layer will need to evolve before the second matrix layer evolves. Once the first layer has evolved enough to *expose* the second layer, the second layer will begin evolving. Thus, there will certainly be simultaneous emanation.

As further support, the first vaporizable phase of the presently claimed invention has been identified as being equivalent to Lindauer's "pockets of perfume" noted as reference number 107, the second vaporizable phase as being equivalent to Lindauer's "inner core cylinder" noted as reference number 103, and the third gel phase as Lindauer's "gel or foam", noted as reference number 101. Lindauer also notes that the "pockets of perfume" 107 are volatile substances contained within, and emanated from, the gel or foam 101. With the foregoing understandings of Lindauer in mind, the applicants direct the Examiner's attention to col. 9, lines 37-43, which states "[as] foam or gel **101** is dissipated, the surface of the inner core cylinder **103** becomes exposed thereby permitting fragrance or air freshener or insect repellent or the like to be evolved from the central core cylinder **103** into the atmosphere ***in addition to the volatilizable substance being evolved from the gel or foam 101***". (col. 9, lines 37-43)(emphasis added). Lindauer clearly and unequivocally teaches the simultaneous emanation of the first and second volatile substances.

The Examiner disagreed the applicants contention that Lindauer teaches a random evaporation of the second phase once it has been slightly exposed by evaporation of the third phase. The Examiner cited Lindauer's description of a "sequentially timed" delivery system of the first and second phases. Whether Lindauer's delivery system is random or "sequentially timed", the point is that Lindauer teaches simultaneous emanation of the first and second

substances. This happens whether the emanation is random or in a sequentially timed fashion.

The differences between the presently claimed invention and Lindauer in view of Benko, as described herein, are discernable and significant. There is clearly no suggestion in Lindauer to the skilled artisan to modify Lindauer such that the second phase is only able to evaporate after the first phase has substantially completely evaporated, nor is there any suggestion to modify the construction of the article to control vaporization rates. Simply put, the differences between the presently claimed invention and the prior art are outside the reach of any design driven adaptations.

The differences between the presently claimed invention and Lindauer are too great to be considered "obvious" because they drastically modify the functionality of the device. Lindauer's device is unable to control vaporization release rates such as in the present invention. Indeed, Lindauer merely teaches randomized scattering of the first phase particles within the third phase, wherein one or both will evaporate at a random time interval depending on which of these phases are exposed to the air during evaporation. The second phase also evaporates on a random basis once the mixed first and third phases have randomly evaporated sufficiently to expose the second phase to the air. The present invention, on the other hand, is able to control the vaporization release rates, due the third phase and the partition wall or "limbs". Indeed, they are inventive improvements that were completely unrecognized by the prior art.

The applicants believe claims are now in condition for allowance, and such favorable action is respectfully requested. If any issues remain, the resolution of which can be advanced through a telephone conference, the Examiner is invited to contact the applicant's attorney at the phone number listed below.

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CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

Respectfully submitted,
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